Minnesota Housing Finance Agency

Neighborhood Stabilization Program
Continued Affordability Requirements

A: Homeownership Housing

Continued Affordability Requirement
NSP requires that NSP-assisted housing have "continued affordability" for a period of years (the continued affordability period), and permits a Grantee to adopt the HOME standard for affordability, except that housing may be occupied by households with incomes up to 120% of AMI. Minnesota Housing, as Grantee, has adopted the HOME standards in its NSP Action Plan and permits, State Subrecipients to implement longer affordability periods if they desire.

The continued affordability period for homeownership housing is enforced through resale and recapture requirements which are the same as the HOME program. Subrecipients are encouraged to read and understand the HOME Regulations, specifically 24 CFR §92.254, which apply to Minnesota Housing's NSP program.

Overview
Resale and Recapture are two methods to ensure that NSP-assisted housing remains affordable for the continued affordability period, which is determined by the amount of the NSP invested in the property. See the table below.

NSP Investment, per-unit	Minimum Continued Affordability Period
Less than $15,000	5 years
$15,000 to $40,000	10 years
Over $40,000	15 years

To determine the amount of NSP funds invested in the unit, you must determine whether you are providing a "development subsidy," or a "direct subsidy."

Subsidy Types
A direct subsidy consists of any financial assistance that reduces the purchase price of a property from fair market value to an affordable price, or otherwise directly subsidizes the purchase. The amount of the direct subsidy determines the minimum affordability period.

Examples of direct subsidies would include downpayment assistance or a reduction in the purchase price to less than the lower of total development cost or market value.

A development subsidy is the amount of the NSP funds that are invested in the property that exceed the fair market value at the time of sale to a homebuyer. The amount of the development subsidy in and of itself is irrelevant to the minimum affordability period. But when there is a development subsidy, the continued affordability period is determined by the total amount of NSP funds that were invested in the property, either temporarily or permanently. For example, if $100,000 of NSP funds are invested in a property, the development subsidy is $100,000, regardless of whether or not the buyer obtained financing that paid back part or all of the NSP investment.

Resale or Recapture?
Resale and recapture are the methods to enforce the period of continued affordability. The State subrecipient's selection of either the resale restrictions or recapture provision depends on whether it provides a development subsidy or a direct subsidy. Resale and/or recapture provisions are described in documents that provide the assistance and are included in various documents that are recorded against the property, such as mortgages, deed restrictions, contracts for deed, and covenants.

Resale restrictions require the homeowner to sell the property at an affordable price to buyers with income not exceeding 120% of AMI for the period of continued affordability, while at the same time ensuring that the owner/seller receives a fair return on their investment. Resale may be employed when the subsidy provided is either a direct or a development subsidy, or if both types of subsidies are provided.

Recapture permits the NSP-assisted homeowner to sell the property to whomever he or she wishes for whatever price the market will bear during the period of continued affordability, but a portion or all of the NSP assistance must be repaid which may not exceed the net proceeds of the sale. If the property ceases to be the homeowner's principal residence, then the full amount of the assistance must be recaptured.

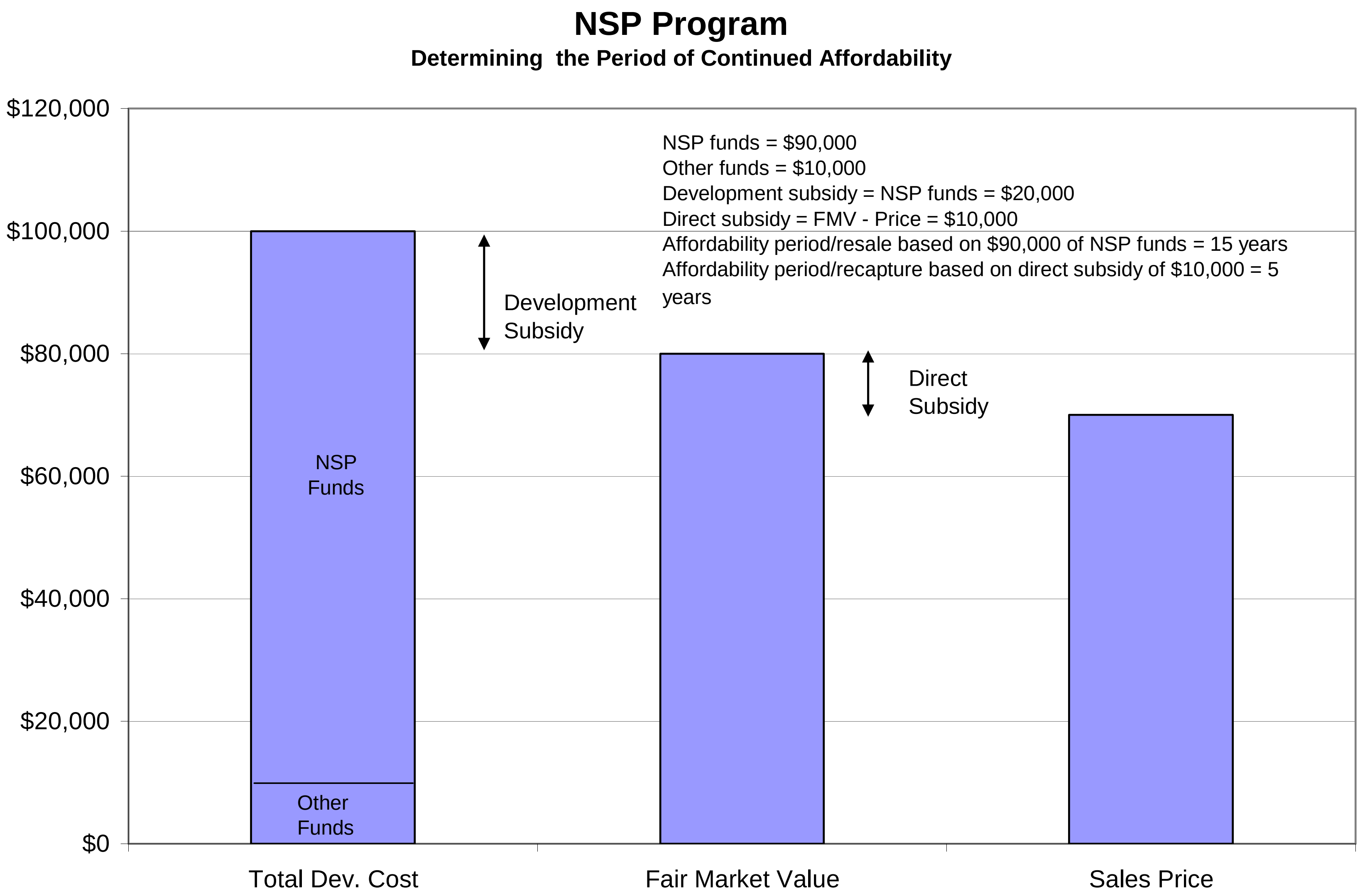
Recapture may be employed **only** when a State subrecipient provides a **direct subsidy**. The direct subsidy may be provided in conjunction with a development subsidy, in which case the affordability period is based on the direct subsidy.

See the attached graph depicting how to determine the type and amount of subsidy and the corresponding period of continued affordability.

Enforcement Mechanisms
The mechanisms for enforcing resale and recapture provisions must be recorded against the property.

> The forms your organization use must be reviewed by your legal counsel before they are submitted to Minnesota Housing for review for compliance with resale and recapture requirements of NSP.

Resale
Because the underlying financing may be repaid at any point, the resale restriction should not be recited only in a mortgage. To survive a mortgage or contract for deed satisfaction that could occur if the homebuyer sells the property or even refinances it, the resale restriction must be contained in a declaration of covenants that is also recorded against the property.


NSP Program
Determining the Period of Continued Affordability
$120,000
$100,000
$80,000
$60,000
$40,000
$20,000
$0
NSP funds = $90,000
Other funds = $10,000
Development subsidy = NSP funds = $20,000
Direct subsidy = FMV - Price = $10,000
Affordability period/resale based on $90,000 of NSP funds = 15 years
Affordability period/recapture based on direct subsidy of $10,000 = 5 years
Development Subsidy
Direct Subsidy
NSP Funds
Other Funds
Total Dev. Cost
Fair Market Value
Sales Price

B: Rental Housing

Continued Affordability Requirement

NSP requires that NSP-assisted housing have "continued affordability" for a period of years (the continued affordability period), and permits a Grantee to adopt the HOME standard for affordability, except that housing may be occupied by households with incomes up to 120% of AMI. Minnesota Housing, as Grantee, has adopted the HOME standards in its NSP Action Plan and permits, State Subrecipients to implement longer affordability periods if they desire. The Minnesota Housing-adopted continued affordability periods for NSP-assisted rental properties are shown in the table, below.

NSP Investment, per-unit	Minimum Continued Affordability Period
Less than $15,000	5 years
$15,000 to $40,000	10 years
Over $40,000	15 years
New Construction	20 years

How to Determine the per-unit NSP Investment

The per unit investment of NSP funds is dependent on the amount of NSP funds invested in the project relative to other funding sources, and the number of units that are reserved for occupancy by NSP income-eligible tenants paying NSP-qualified rents.

- If a structure contains one housing unit, the NSP investment is the amount of NSP funds.
- If a structure contains two housing units, at least one of the units must be occupied by and restricted for occupancy by an NSP income-eligible tenant paying NSP-qualified rent, in which case the per-unit investment of NSP funds is the total NSP investment in the property. If both units are occupied and restricted for NSP income-eligible tenants paying NSP-qualified rents, the per-unit investment is the average of NSP investment over the two units.
- If a structure contains three or more housing units, the proportion of units occupied by low, moderate and middle income households must be equal to or greater than the proportion of the total project development costs borne by NSP funds. Thus, if NSP funds represent 50% of the total development costs for a project, then at least 50% of the units must be occupied by low, moderate and middle income persons upon completion and occupancy. If NSP funds are the sole funding source for a project, then all units must be occupied by low, moderate and middle income persons.
- If a State Subrecipient assists a homebuyer to buy a foreclosed fourplex, where the owner will live in one unit, and NSP funds represent 60% of the acquisition and rehabilitation costs, then 2 of the 3 rental units must be occupied by income eligible tenants in addition to the homebuyer; but if NSP funds were no more than 25% of the total costs, then none of the rental units need be occupied by income eligible tenants.

Enforcement Mechanisms

The mechanisms to enforce continued affordability for rental housing are promissory notes, grant agreements, and documents recorded against the property, such as declarations of covenants and mortgages. Subrecipients are encouraged to read and understand the HOME Regulations, specifically 24 CFR §92.252 (a), (c), (e), and (f), which apply to Minnesota Housing's NSP program for rental housing.

Below is a sample Declaration of Covenants that's been used by Minnesota Housing's HOME Rental Rehabilitation program to enforce continued affordability. A Declaration reciting the continued affordability requirements must be filed against the property to ensure that the requirements remain in place for the period of continued affordability if the mortgage is satisfied. The Declaration is an example only, and should not be used in its current state as it does not appropriately identify the parties to the transaction or meet your specific program requirements.

The forms your organization use must be reviewed by your legal counsel before they are submitted to Minnesota Housing for review for compliance with the requirements of NSP.